

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

JOSEPH DALE MOSS,

Petitioner,

v.

LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

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2:15-CV-0079

ORDER OVERRULING OBJECTIONS,
ADOPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION
and DENYING PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner has filed with this Court a petition for a federal writ of habeas corpus. On January 31, 2018, the United States Magistrate Judge issued findings, conclusions and a recommendation in this cause, recommending therein that the instant habeas application be denied. On February 16, 2018, petitioner filed objections to the Magistrate Judge's Findings, Conclusions and Recommendation (FCR).

By his objections, petitioner initially raises claims that he did not receive a proper review from the Magistrate Judge as evidenced by inaccurate references to the procedural history. Petitioner states the date of conviction is incorrect, but as stated in the FCR, the Court referenced the date of Judgment and cited to the record at ECF 9-3 at 56; this was a proper citation. As for petitioner's claim that the Magistrate Judge incorrectly stated he was sentenced by the trial jury, petitioner is correct, he was sentenced by the trial court. [*Id.*]. Finally, petitioner argues his petition was not deposited into the prison mail system but instead filed by a third party. A review of the original form

petition contains the standard language "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on..." [ECF 3 at 20]. Following this statement, which was not crossed out or deleted in any way, appeared the typed words "HAND DELIVERED" with a hand-written date. [*Id.*]. In the light most favorable to petitioner, the Court construed this ambiguity in favor of petitioner for filing purposes. *See Spotville v. Cain*, 149 F.3d 374, 377 (5th Cir. 1998). These objections, as well as petitioner's other objections, do not demonstrate he received anything but a thorough review of his claims.

Therefore, having made an independent examination of the record in this case and having considered the objections made by petitioner to the Findings, Conclusions and Recommendation, the undersigned United States Senior District Judge finds the objections filed by petitioner are without merit and are hereby OVERRULED. The Magistrate Judge's Findings, Conclusions and Recommendation is ADOPTED. Accordingly, the petition for a writ of habeas corpus is DENIED.

IT IS SO ORDERED.

ENTERED this 2nd day of MARCH 2018.



MARY LOU ROBINSON
UNITED STATES SENIOR DISTRICT JUDGE